
ENGROSSED SUBSTITUTE SENATE BILL 5424

State of Washington

61st Legislature

2010 Regular Session

By Senate Ways & Means (originally sponsored by Senators Parlette and Sheldon)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to interest rate and penalty provisions in the
2 current use program; amending RCW 84.34.070; reenacting and amending
3 RCW 84.34.108; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 84.34.108 and 2009 c 513 s 2, 2009 c 354 s 3, 2009 c
6 255 s 2, and 2009 c 246 s 3 are each reenacted and amended to read as
7 follows:

8 (1) When land has once been classified under this chapter, a
9 notation of the classification (~~shall~~) must be made each year upon
10 the assessment and tax rolls and the land (~~shall~~) must be valued
11 pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a
12 portion of the classification by the assessor upon occurrence of any of
13 the following:

14 (a) Receipt of notice from the owner to remove all or a portion of
15 the classification;

16 (b) Sale or transfer to an ownership, except a transfer that
17 resulted from a default in loan payments made to or secured by a
18 governmental agency that intends to or is required by law or regulation

1 to resell the property for the same use as before, making all or a
2 portion of the land exempt from ad valorem taxation;

3 (c) Sale or transfer of all or a portion of the land to a new
4 owner, unless the new owner has signed a notice of classification
5 continuance, except transfer to an owner who is an heir or devisee of
6 a deceased owner (~~shall~~) does not, by itself, result in removal of
7 classification. The notice of continuance shall be on a form prepared
8 by the department. If the notice of continuance is not signed by the
9 new owner and attached to the real estate excise tax affidavit, all
10 additional taxes calculated pursuant to subsection (4) of this section
11 (~~shall-become~~) are due and payable by the seller or transferor at
12 time of sale. The auditor (~~shall~~) may not accept an instrument of
13 conveyance regarding classified land for filing or recording unless the
14 new owner has signed the notice of continuance or the additional tax
15 has been paid, as evidenced by the real estate excise tax stamp affixed
16 thereto by the treasurer. The seller, transferor, or new owner may
17 appeal the new assessed valuation calculated under subsection (4) of
18 this section to the county board of equalization in accordance with the
19 provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the
20 county board of equalization to hear these appeals;

21 (d) Determination by the assessor, after giving the owner written
22 notice and an opportunity to be heard, that all or a portion of the
23 land no longer meets the criteria for classification under this
24 chapter. The criteria for classification pursuant to this chapter
25 continue to apply after classification has been granted.

26 The granting authority, upon request of an assessor, (~~shall~~) must
27 provide reasonable assistance to the assessor in making a determination
28 whether the land continues to meet the qualifications of RCW 84.34.020
29 (1) or (3). The assistance (~~shall~~) must be provided within thirty
30 days of receipt of the request.

31 (2) Land may not be removed from classification because of:

32 (a) The creation, sale, or transfer of forestry riparian easements
33 under RCW 76.13.120; or

34 (b) The creation, sale, or transfer of a fee interest or a
35 conservation easement for the riparian open space program under RCW
36 76.09.040.

37 (3) Within thirty days after the removal of all or a portion of the
38 land from current use classification under subsection (1) of this

1 section, the assessor shall notify the owner in writing, setting forth
2 the reasons for the removal. The seller, transferor, or owner may
3 appeal the removal to the county board of equalization in accordance
4 with the provisions of RCW 84.40.038. The removal notice must explain
5 the steps needed to appeal the removal decision, including when a
6 notice of appeal must be filed, where the forms may be obtained, and
7 how to contact the county board of equalization.

8 (4) Unless the removal is reversed on appeal, the assessor
9 (~~shall~~) must revalue the affected land with reference to its true and
10 fair value on January 1st of the year of removal from classification.
11 Both the assessed valuation before and after the removal of
12 classification shall be listed and taxes shall be allocated according
13 to that part of the year to which each assessed valuation applies.
14 Except as provided in subsection (6) of this section, an additional
15 tax, applicable interest, and penalty (~~shall-be~~) is imposed which
16 (~~shall-be~~) is due and payable to the treasurer thirty days after the
17 owner is notified of the amount of the additional tax. As soon as
18 possible, the assessor (~~shall~~) must compute the amount of additional
19 tax, applicable interest, and penalty and the treasurer shall mail
20 notice to the owner of the amount thereof and the date on which payment
21 is due. The amount of the additional tax, applicable interest, and
22 penalty (~~shall~~) must be determined as follows:

23 (a) The amount of additional tax (~~shall-be~~) is equal to the
24 difference between the property tax paid as "open space land," "farm
25 and agricultural land," or "timber land" and the amount of property tax
26 otherwise due and payable for the seven years last past had the land
27 not been so classified;

28 (~~The amount of applicable interest shall be equal to the~~
29 ~~interest upon the amounts of the additional tax paid at the same~~
30 ~~statutory rate charged on delinquent property taxes from the dates on~~
31 ~~which the additional tax could have been paid without penalty if the~~
32 ~~land had been assessed at a value without regard to this chapter;~~) The
33 interest rate provided in RCW 84.69.100 must be charged on the amount
34 of additional tax imposed under (a) of this subsection. The annual
35 rate of interest in effect at the time of removal must be applied to
36 the total amount of additional tax due;

37 (c) The amount of the penalty (~~shall-be~~) is as provided in RCW

1 84.34.080. The penalty (~~shall~~) may not be imposed if the removal
2 satisfies the conditions of RCW 84.34.070.

3 (5) Additional tax, applicable interest, and penalty, (~~shall~~)
4 must become a lien on the land which (~~shall~~) attaches at the time the
5 land is removed from classification under this chapter and (~~shall~~
6 ~~have~~) has priority to and shall be fully paid and satisfied before any
7 recognizance, mortgage, judgment, debt, obligation or responsibility to
8 or with which the land may become charged or liable. This lien may be
9 foreclosed upon expiration of the same period after delinquency and in
10 the same manner provided by law for foreclosure of liens for delinquent
11 real property taxes as provided in RCW 84.64.050. Any additional tax
12 unpaid on its due date (~~shall~~) becomes thereupon (~~become~~)
13 delinquent. From the date of delinquency until paid, interest
14 (~~shall~~) must be charged at the same rate applied by law to delinquent
15 ad valorem property taxes.

16 (6) The additional tax, applicable interest, and penalty specified
17 in subsection (4) of this section (~~shall~~) may not be imposed if the
18 removal of classification pursuant to subsection (1) of this section
19 resulted solely from:

20 (a) Transfer to a government entity in exchange for other land
21 located within the state of Washington;

22 (b)(i) A taking through the exercise of the power of eminent
23 domain, or (ii) sale or transfer to an entity having the power of
24 eminent domain in anticipation of the exercise of such power, said
25 entity having manifested its intent in writing or by other official
26 action;

27 (c) A natural disaster such as a flood, windstorm, earthquake, or
28 other such calamity rather than by virtue of the act of the landowner
29 changing the use of the property;

30 (d) Official action by an agency of the state of Washington or by
31 the county or city within which the land is located which disallows the
32 present use of the land;

33 (e) Transfer of land to a church when the land would qualify for
34 exemption pursuant to RCW 84.36.020;

35 (f) Acquisition of property interests by state agencies or agencies
36 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
37 purposes enumerated in those sections. At such time as these property

1 interests are not used for the purposes enumerated in RCW 84.34.210 and
2 64.04.130 the additional tax specified in subsection (4) of this
3 section (~~shall be~~) is imposed;

4 (g) Removal of land classified as farm and agricultural land under
5 RCW 84.34.020(2)(f);

6 (h) Removal of land from classification after enactment of a
7 statutory exemption that qualifies the land for exemption and receipt
8 of notice from the owner to remove the land from classification;

9 (i) The creation, sale, or transfer of forestry riparian easements
10 under RCW 76.13.120;

11 (j) The creation, sale, or transfer of a conservation easement of
12 private forest lands within unconfined channel migration zones or
13 containing critical habitat for threatened or endangered species under
14 RCW 76.09.040;

15 (k) The sale or transfer of land within two years after the death
16 of the owner of at least a fifty percent interest in the land if the
17 land has been assessed and valued as classified forest land, designated
18 as forest land under chapter 84.33 RCW, or classified under this
19 chapter continuously since 1993. The date of death shown on a death
20 certificate is the date used for the purposes of this subsection
21 (6)(k); or

22 (l)(i) The discovery that the land was classified under this
23 chapter in error through no fault of the owner. For purposes of this
24 subsection (6)(l), "fault" means a knowingly false or misleading
25 statement, or other act or omission not in good faith, that contributed
26 to the approval of classification under this chapter or the failure of
27 the assessor to remove the land from classification under this chapter.

28 (ii) For purposes of this subsection (6), the discovery that land
29 was classified under this chapter in error through no fault of the
30 owner is not the sole reason for removal of classification pursuant to
31 subsection (1) of this section if an independent basis for removal
32 exists. Examples of an independent basis for removal include the owner
33 changing the use of the land or failing to meet any applicable income
34 criteria required for classification under this chapter.

35 **Sec. 2.** RCW 84.34.070 and 1992 c 69 s 10 are each amended to read
36 as follows:

37 (1) When land has once been classified under this chapter, it shall

1 remain under such classification and shall not be applied to other use
2 except as provided by subsection (2) of this section for at least ten
3 years from the date of classification and shall continue under such
4 classification until and unless withdrawn from classification after
5 notice of request for withdrawal shall be made by the owner. (~~During~~
6 ~~any year~~) After (~~eight years of~~) the initial ten-year classification
7 period (~~have~~) has elapsed, notice of request for withdrawal of all or
8 a portion of the land may be given by the owner to the assessor or
9 assessors of the county or counties in which such land is situated. In
10 the event that a portion of a parcel is removed from classification,
11 the remaining portion must meet the same requirements as did the entire
12 parcel when such land was originally granted classification pursuant to
13 this chapter unless the remaining parcel has different income criteria.
14 Within seven days the assessor shall transmit one copy of such notice
15 to the legislative body which originally approved the application. The
16 assessor or assessors, as the case may be, shall (~~, when two assessment~~
17 ~~years have elapsed following the date of receipt of such notice,~~)
18 withdraw such land from such classification and the land shall be
19 subject to the additional tax and applicable interest due under RCW
20 84.34.108. Agreement to tax according to use shall not be considered
21 to be a contract and can be abrogated at any time by the legislature in
22 which event no additional tax or penalty shall be imposed.

23 (2) The following reclassifications are not considered withdrawals
24 or removals and are not subject to additional tax under RCW 84.34.108:

- 25 (a) Reclassification between lands under RCW 84.34.020 (2) and (3);
- 26 (b) Reclassification of land classified under RCW 84.34.020 (2) or
27 (3) or chapter 84.33 RCW to open space land under RCW 84.34.020(1);
- 28 (c) Reclassification of land classified under RCW 84.34.020 (2) or
29 (3) to forest land classified under chapter 84.33 RCW; and
- 30 (d) Reclassification of land classified as open space land under
31 RCW 84.34.020(1)(c) and reclassified to farm and agricultural land
32 under RCW 84.34.020(2) if the land had been previously classified as
33 farm and agricultural land under RCW 84.34.020(2).

34 (3) Applications for reclassification shall be subject to
35 applicable provisions of RCW 84.34.037, 84.34.035, 84.34.041, and
36 chapter 84.33 RCW.

37 (4) The income criteria for land classified under RCW 84.34.020(2)
38 (b) and (c) may be deferred for land being reclassified from land

1 classified under RCW 84.34.020 (1)(c) or (3), or chapter 84.33 RCW into
2 RCW 84.34.020(2) (b) or (c) for a period of up to five years from the
3 date of reclassification.

4 NEW_SECTION. **Sec. 3.** This act applies to taxes levied for
5 collection in 2011 and thereafter.

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